

## **REMARKS**

### **Specification and Claim Amendments:**

Applicants have amended the Abstract and drawings to comply with U.S. practice. Applicants have also amended claims 18, 19, 23, 24, 26-28, and 34. Support for the amendments may be found in the specification at, for example, at page 10, lines 9-18 and 26-30, and page 6, lines 25-33. Upon entry of this Amendment, claims 18-34 remain pending, with claims 19-33 withdrawn from consideration, and claims 18-28 and 34 under current examination.

### **Office Action:**

Applicants respectfully traverse the objections and rejections made in the Office Action mailed October 16, 2009, wherein the Examiner:

- (1) required cancellation of nonelected claims;
- (2) objected to the drawings under 37 C.F.R. § 1.83(a);
- (3) objected to the abstract of the specification as containing claim language;
- (4) rejected claim 18-28 and 34 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement;
- (5) rejected claim 18-28 and 34 under 35 U.S.C. § 112, second paragraph, as being indefinite;
- (6) rejected claim 34 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (7) rejected claims 18 and 34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent App. Pub. No. 2002/0010794 ("*Ben-Shaul*") in view of U.S. Patent App. Pub. No. 2003/0028564 ("*Sanfilippo*");
- (8) rejected claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul* in view of *Sanfilippo*, and further in view of U.S. Patent No. 6,829,613 ("*Libby*");
- (9) rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul* in view of *Sanfilippo*, and further in view of U.S. Patent App. Pub. No. 2002/0062300 ("*Asadov*");
- (10) rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul* in view of *Sanfilippo* and *Asadov*,

and further in view of U.S. Patent App. Pub. No. 2002/0188681 (“*Gruen*”);

(11) rejected claims 23, 24, and 26-28 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul* in view of *Sanfilippo*, and further in view of U.S. Patent App. Pub. No. 2002/0087659 (“*Chapman*”); and

(12) rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul* in view of *Sanfilippo* and *Chapman*, and further in view of U.S. Patent No. 7,222,185 (“*Day*”).

**I. Regarding the PTO-892 Form Received with the Office Action**

In the Office Action, the Examiner cited several references, including *Ben-Shaul*, *Sanfilippo*, *Libby*, *Asadov*, *Gruen*, *Chapman*, and *Day* (see Office Action at pp. 8, 10-12, and 16), but did not include any of these reference on the Notice of References Cited (PTO-892). In fact, the PTO-892 accompanying the Office Action was blank. **Applicants therefore request a PTO-892 form, listing the cited references, with the next communication from the Office.**

**II. Regarding the Nonelected Claims**

Applicants elected to prosecute Group I (claims 18-28 and 34) on September 14, 2009. The Office Action, however, did not indicate whether or not the Restriction Requirement had been made final, or whether the election was being treated without traverse. Therefore, the cancellation of nonelected claims by Applicants is unnecessary and not required at this stage of the prosecution. Instead, if the Examiner still requires cancellation of the nonelected claims, Applicants respectfully request that the Examiner use form paragraph 8.07 to cancel the nonelected claims at the conclusion of prosecution on the merits. See M.P.E.P. § 821.02.

**III. Objection to the Drawings:**

The Office Action objected to the drawings under 37 C.F.R. § 1.83(a) and asserted that FIGS. 1-9 “fail to show necessary textual labels of features or symbols.” Office Action, p. 3. In response, and without conceding to the Office Action’s assertions, Applicants submit nine (9)

replacement drawing sheets, corresponding to Figs. 1-9. The replacement drawings fully comply with 37 C.F.R. § 1.121(d) and Applicants respectfully request withdrawal of the objection.

**IV. Objection to the Abstract:**

The Office Action objected to the Abstract and asserted that the abstract “contains claim language (e.g., “said” in line 8 and 9).” Office Action, p. 4. In response, Applicants have amended the Abstract to place it in proper form for U.S. practice by making the required corrections. The Abstract fully complies with M.P.E.P. §608.01(b), and Applicants respectfully request withdrawal of the objection.

**V. Rejection of Claims 18-28 and 34 under 35 U.S.C. § 112, First Paragraph:**

The Office Action rejected claims 18-28 and 34 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. *See* Office Action, pp. 4-5.

For claim 18, the Office Action alleged that “the specification does not provide sufficient disclosure” regarding the “distance” recited in the claim. Office Action, p. 5. Applicants respectfully point to page 11, lines 14-20 of the specification where an exemplary “semantics affinity” is described as being calculated as “distance...of the content  $w_1$ ,  $w_2$  from the set of reference contents RC or the central reference content CRC.”

For claim 19, the Office Action alleged that “the specification does not provide sufficient disclosure” regarding the “neural networks, fuzzy logic and decision tree” recited in the claim. Office Action, p. 5. Applicants respectfully point to page 11, lines 14-20 of the specification where “data mining/artificial intelligence mechanisms (such as, for example, neural networks, fuzzy logic, decision trees” are disclosed.

For claims 21 and 22, the Office Action alleged that “the specification does not provide sufficient disclosure” regarding the “reference content” and “search engines” recited in the claim. Office Action, p. 5. Applicants respectfully point to page 10, line 32 - page 11, line 5 of

the specification discloses that “reference content” can be obtained using “search engines” such as “Cluster Detection” or other “data-mining techniques.”

For claim 28, the Office Action alleged that “the specification does not disclose what a ‘policy template’ is.” Office Action, p. 6. Applicants respectfully submit that several places of the specification disclose and describe the “class/policy template repository E<sub>2</sub>,” (such as page 13, lines 10-22) and “policy template” (such as Fig. 4 and page 14, lines 13-19). Indeed, “class template” and “policy template” are used in an interchangeable manner in the specification. Nevertheless, in order to improve clarification and without conceding to the Office Action’s allegation, Applicants have amended claim 28 to recite a “class template repository.”

Therefore, claims 18-28 and 34 are supported by the specification, and thus the claims fully comply with the provisions of 35 U.S.C. § 112, first paragraph. That is, the subject matter of claims 18-28 and 34 is described in the specification in such a way so as to reasonably convey to a person of ordinary skill in the art that Applicants, at the time the application was filed, had possession of the claimed invention. Applicants request withdrawal of the rejection.

**VI. Rejection of Claims 18-28 and 34 under 35 U.S.C. § 112, Second Paragraph:**

The Office Action rejected claims 18-28 and 34 under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. *See* Office Action, pp. 6-7.

For claims 18 and 19, Applicants have amended the claims, without conceding to the Office Action’s allegation, in order to improve clarity. For example, Applicants have deleted the word “additional” in claim 18, and changed “data mining/artificial intelligence” to “data mining or artificial intelligence” in claim 19.

For claims 27 and 28, the Office Action alleged that “claim template” is “not defined in the specification.” Office Action, p. 7. Applicants respectfully disagree. Contrary to the Office Action’s allegation, the above-quoted feature is clearly described in the specification. For

example, Fig. 5, 6 and 7, along with descriptions associated with these figures, clearly disclose and describe several embodiments of the “class template.”

Therefore, claims 18-28 and 34 fully comply with the provisions of 35 U.S.C. § 112, second paragraph. Applicants request withdrawal of the rejection.

**VII. Rejection of Claim 34 under 35 U.S.C. § 101:**

The Office Action rejected claim 34 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. *See* Office Action, pp. 7-8. In particular, the Office Action alleged that the “one of ordinary skill in the art could interpret the product as **software per se**” and indicated that while “the program product is ‘loadable in the memory of at least one computer’, it is not positively recited to be recorded in the memory.” Office Action, pp. 7-8 (emphasis in original). Moreover, the Office Action indicated that, “[w]hen recorded on some computer-readable medium it ... will be statutory in most cases.” Office Action, p. 7.

In response, and without conceding to the Office Action’s allegation, Applicants have amended claim 34 to recite a computer-readable medium encoded with a computer program product. As described in the U.S. Patent and Trademark Office’s recently issued *Interim Examination Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101* (Aug. 2009), “a claim to a non-transitory, tangible computer readable storage medium *per se* that possesses structural limitations under the broadest reasonable interpretation standard to qualify as a manufacture would be patent-eligible subject matter.” *Interim Instructions* at 4. This amendment overcomes the 35 U.S.C. § 101 rejection of claim 34, and Applicants accordingly request its withdrawal.

**VIII. Rejections of Claims 18-28 and 34 under 35 U.S.C. § 103(a):**

Applicants request reconsideration and withdrawn of the rejections of claims 18-28 and 34 under 35 U.S.C. § 103(a) as being unpatentable over *Ben-Shaul*, in view of one or more of *Sanfilippo*, *Libby*, *Asadov*, *Gruen*, *Chapman*, and *Day*. See Office Action, pp. 8-17.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In particular, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has properly not interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

Contrary to the assertions of the Office Action, the recited references, taken alone or in combination, do not teach or suggest at least the following features of claim 18, for example:

- identifying contents eligible for distribution from the remaining contents;
- defining a set of categories;
- identifying for each category at least a reference content;
- associating said identified contents with said predefined categories based on semantics affinity with said reference content, said semantics affinity being calculated as the distance of each of said identified contents to said at least a reference content;
- selecting at least one of said predefined categories; and
- making at least one of the identified contents associated with said selected predefined category available for distribution at said surrogate servers.

In contrast, *Ben-Shaul* discloses “a content and application delivery system comprising...an origin web server” and “an edge server communicating via a data network with

the origin web server and with a policy control server.” *Ben-Shaul*, paragraph [0072]. The origin web server “has a first memory for storing a first version of web content,” and the edge server “has a second memory for storing a second version of the web content.” *Id.* In addition, “in responsive to the request [redirected from the origin server] a third version of the web content is provided to the user from the edge server,” where “the third version is derived from the second version in accordance with the directives of the service policy.” *Id.*

The Office Action interpreted the “edge server” and “third version of the web content” disclosed by *Ben-Shaul* as corresponding to the claimed “surrogate server” and “contents eligible for distribution,” respectively. *See* Office Action, p. 8. This is incorrect. According to *Ben-Shaul*, the “third version of the web content” is derived from the second version stored on the edge server, and thus is not identified “from the remaining contents” which “are not available on the surrogate servers,” as recited in amended claim 18.

Furthermore, the Office Action interpreted *Ben-Shaul*’s classification of content stored within a local file system “within appropriate predefined directories” as corresponding to “defining a set of categories,” as recited in claim 18. *Id.* However, even accepting this interpretation for the sake of argument, a position Applicants do not concede, *Ben-Shaul* fails to teach or suggest “identifying for each category at least a reference content,” or “associating said identified contents with said predefined categories based on semantics affinity with said reference content, said semantics affinity being calculated as the distance of each of said identified contents to said at least a reference content,” as recited in claim 18.

The Office Action conceded that *Ben-Shaul* does not teach or suggest “a reference content,” but used hindsight reasoning to assert that because *Ben-Shaul*’s system returns a list of cook books in response to a request for a cook book, the contents must have been associated with predefined categories based on semantics affinity. *Id.* Applicants respectfully disagree with this

hindsight reasoning and submit that *Ben-Shaul* does not teach or suggest “associating said identified contents with said predefined categories based on semantics affinity with said reference content,” as recited in claim 18.

Moreover, the Office Action pointed to *Ben-Shaul*’s “second version of the web content” for the teaching of “selecting at least one of said predefined categories,” as recited in claim 18. According to *Ben-Shaul*, the “second version is derived from the first version by selecting resources from the **first version [on the origin web server]** according to predetermined criteria,” rather than by selecting at least one directory among the “appropriate predefined directories” that are stored on the **edge server**, which is alleged by the Office Action as the claimed “predefined categories.” (emphases added). *See Ben-Shaul*, paragraphs [0062] and [0083]. Since *Ben-Shaul* fails to teach or suggest at least “selecting at least one of said predefined categories,” as recited in claim 18, it also follows that it fails to teach or suggest “making at least one of the identified contents associated with said selected predefined category available for distribution at said surrogate servers,” as recited in claim 18.

*Sanfilippo* does not cure the deficiencies of *Ben-Shaul* because it also fails to teach or suggest the above-quote claim features recited in amended claim 18. Instead, *Sanfilippo* discloses “a method and system for matching a reference document with a plurality of corpus documents.” *Sanfilippo*, paragraph [0019]. A “matching score is produced by determining a distance...between types defining semantic content of the reference and corpus documents.” *Sanfilippo*, paragraph [0022]. The Office Action interpreted *Sanfilippo*’s “matching score” as corresponding to the claimed “semantics affinity.” *See* Office Action, p. 9. However, even accepting this interpretation for the sake of argument, a position Applicants do not concede, *Sanfilippo* still fails to teach or suggest at least Applicants’ claimed “associating said identified



contents with said predefined categories based on semantics affinity with said reference content,” as recited in claim 18.

Therefore, *Ben-Shaul* and *Sanfilippo*, taken either alone or in combination, fail to teach or suggest at least the above-quoted features of claim 18. Thus, the Office Action has not properly ascertained the differences between the prior art and the claimed invention. Independent claim 18 and its dependent claim 34 should therefore be allowable over *Ben-Shaul* and *Sanfilippo*. Moreover, *Libby*, *Asadov*, *Gruen*, *Chapman*, and *Day*, whether taken alone or in any combination, fail to cure these deficiencies of *Ben-Shaul* and *Sanfilippo*, and the Office Action does not allege that they do so. Therefore, dependent claims 19-28 are not obvious over *Ben-Shaul* and *Sanfilippo* in view of one or more of *Libby*, *Asadov*, *Gruen*, *Chapman*, and *Day*, whether taken alone or in any combination, at least by virtue of being dependent from non-obvious base claim 18, and because they recite additional features not taught or suggested by the cited references. Accordingly, Applicant requests the withdrawal of the 35 U.S.C. § 103(a) rejections and allowance of these claims.

**IX. Conclusion:**

Applicants request reconsideration of the application and withdrawal of the objections and rejections. Pending claims 18-28 and 34 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the cited art and related claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations.

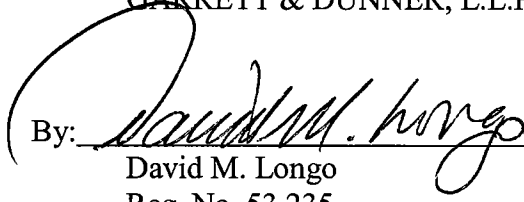
If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: January 14, 2010

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